

Teamsters Construction Workers Local Union No. 13 (Mobile Pre-Mix Concrete) and Bernard E. Piper. Case 27-CB-1501

14 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

Upon a charge filed by Bernard E. Piper on 25 August 1980, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on 24 February 1981 against the Union, Teamsters Construction Workers Local No. 13.

The complaint alleges that Respondent violated Section 8(b)(1)(A) and (2) of the Act by suspending Piper from membership in the Union for failure to pay dues without notifying him of the precise amount and months for which dues were owed, explaining to him the method of computation used, apprising him that discharge would result from failure to pay, providing him with a reasonable opportunity to make payment, and by attempting to cause the Employer to discharge him.

On 15 October 1982, the parties to this proceeding entered into a stipulation of facts and of the record. The parties agree that the stipulation of facts with its exhibits attached thereto constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties. They waive a hearing before, and the making of findings of fact and conclusions of law by, a judge, and submit the proceeding for findings of fact, conclusions of law, and an order directly to the Board. On 1 February 1983, the Board approved the stipulation and ordered the proceeding transferred to it. The General Counsel and Respondent filed briefs.

The National Labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record herein and the briefs and makes the following findings of fact and conclusions of law.

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, Mobile Pre-Mix Concrete, Inc., sells ready mixed concrete and concrete aggregates valued in excess of \$50,000 directly to companies, each of which purchases and receives goods and materials valued in excess of \$50,000 directly from outside the State of Colorado, and that the Employer is an employer engaged in commerce and operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Teamsters Construction Workers Local Union No. 13 is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Stipulated Facts

Bernard E. Piper was hired by Mobile Pre-Mix Concrete, Inc., on 28 February 1979. He was immediately informed by the employer that he would have to join the Union after 30 days of employment and that he should tender the initiation fees to the Union when approached by it. The pertinent collective-bargaining agreement between Respondent and the Employer contains a union-security clause which provides that "good standing" union membership is a condition of employment. Piper was finally "approached" by Respondent a few days before 6 May 1980.¹ At that time he offered a check to the Union's steward which was not accepted because the steward was not bonded. During the same conversation they discussed whether Piper was liable for all of the dues following his date of hire. On 5 May Piper filled out an application for membership in the Union and tendered the Union's business agent a check dated 6 May for the initiation fee and 1 month's dues. Piper was given a receipt for this payment and allegedly was mailed a second receipt which credited dues paid through April. Piper denies having received the second receipt. Thereafter, he was mailed a union membership card dated 6 May.

On 13 June Piper paid another month's dues by check which contained the note "dues for June 80" on its face. He was given a receipt which credited dues paid through May. On 11 August Piper's wife mailed to the Union a check for \$36 with the note "July & Aug. 1980" written on its face.

On 14 August Respondent notified Piper, through letter, that he had been "automatically suspended" for having been 2 months in arrears in the payment of dues. Section 18(c) of the Respondent's bylaws provide for the automatic suspension of members for failure to pay dues after 2 months in arrears. The letter invited Piper to rejoin the Union by paying a reinitiation fee of \$225 and 1 month's dues of \$18. It did not specify the months in arrears, the method of computation, or the possible consequences of failing to secure reinstatement of membership. Subsequently, on 21 August, Respondent requested the Employer to terminate

¹ Dates hereinafter refer to 1980.

Piper for failure to tender periodic union dues. After receiving the suspension letter, Piper was personally advised of his right to appeal the matter to the Local Union Executive Board. Piper submitted letters appealing the Local Union's determination to the Union's General Executive Board in Washington, D.C., the Local Executive Board and the Local Joint Board.

After the filing of the charge in this proceeding, Respondent, in a letter to the employer dated 26 August, rescinded its request for the dismissal of Piper pending the outcome of the charges before the Board. Piper then paid the reinitiation fee.

B. Discussion

In *Teamsters Local 122 (August A. Bush & Co.)*, 203 NLRB 1041 (1973), the Board noted that a union has a "fiduciary duty to treat [its members] fairly" and held that "before a union may cause a member's discharge from employment because of dues arrearage . . . it must meet this 'minimum' obligation by giving reasonable notice of the delinquency, including a statement of the precise amount and months for which dues were owed, as well as an explanation of the method used in computing such amount." See also *Western Publishing Co.*, 263 NLRB 1110 (1982). Later, in *Distillery Workers Local 38 (Schenley Distillers)*, 242 NLRB 370 (1979), the Board added that a union's fiduciary duty included informing the members "when such payments are to be made and that discharge will result from failure to pay" (footnote omitted). The Board further stated that a "clear and unambiguous" notice of the dues delinquencies must be given to the member and that "[e]ven if a union member is aware generally of the obligation under a union-security provision, a union is still required to give specific and advance notice of the arrearages, and meet the minimum level of conduct required under its fiduciary duty"

Applying the above principles to the case at hand, we conclude that Respondent's notice of suspension of 14 August 1980 did not constitute "advance" notice² of the alleged dues delinquency and did not include information about the precise months for which dues were owed, explanation of the method used in computing³ such amount or

notice of the possible consequences of nonpayment. Thus, it necessarily follows that Respondent breached its fiduciary duty to treat Piper fairly by not exercising the minimum level of conduct required.⁴

CONCLUSIONS OF LAW

Respondent breached its fiduciary duty to treat Piper fairly by not informing him of the precise monthly dues held in arrears, the method of computation of the amount alleged by owed, and by failing to give him adequate advance notice of the delinquent union dues and of the consequences of membership suspension in a clear and unambiguous fashion. Further, by threatening and attempting to cause the Employer to discharge him, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) and (2) of the Act, we shall order it to: cease and desist from such conduct and take appropriate remedial action; advise the employer in writing that it rescinds any request or demand that Piper be discharged or not be allowed to work; advise Piper, in writing, that the actions found illegal or unfair in this Decision are rescinded; post at its business office copies of the attached notice marked "Appendix"; refund Piper for the reinitiation fee paid since said payment was insisted on by Respondent as a condition for Piper's continued employment.

ORDER

The National Labor Relations Board orders that the Respondent, Teamsters Construction Workers Local Union No. 13, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening discharge or attempting or causing Mobile Pre-Mix Concrete, Inc., to discharge or to otherwise discriminate against Bernard E. Piper for failure to tender periodic dues without adequately advising him of his obligations.

² Respondent alleges that it sent Piper a postcard apprising him of his dues delinquency. However, Piper denied receiving such postcard and Respondent did not produce actual evidence of the mailing. Examining a copy submitted in evidence of a sample of the preprinted postcard, we note that it nevertheless fails to meet the requirements mentioned above.

³ We also note that Respondent's bylaws provide that "no applicant shall become a member in the first ten days following the acceptance of his written application." Accordingly, since Piper filed his membership application on 5 May 1980 and received his membership card dated 6 May 1980, logically the first month he was required to pay dues was May, rather than April as Respondent contends. Under this rationale, Piper never achieved the "automatic suspended status." Respondent's

mailing of a receipt in June 1980 crediting dues payment through May 1980 is insufficient notice particularly in light of the fact that Piper noted on the face of his payment checks the months for which payment was intended.

⁴ The complaint alleges that the suspension alone violated the Act. By suspending Piper from membership Respondent did not, per se, commit an unfair labor practice. Expulsion from membership in a labor organization is a matter of internal union concern, and does not in and of itself give rise to a violation of the Act. *Teamsters Local 122*, supra. Accordingly, we shall dismiss this part of the complaint.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Refund Bernard E. Piper the reinitiation fees paid by him to Respondent.

(b) Notify the employer, Mobile Pre-Mix Concrete, Inc., in writing, and advise Bernard E. Piper, in writing, that it rescinds any request or demand that said employee be discharged or not allowed to work and that it has no objection to his continued employment with unimpaired rights and privileges.

(c) Post at its business office copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 27, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the allegation that Respondent violated the Act by suspending Piper from membership is dismissed.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, cause, or attempt to cause Mobile Pre-Mix Concrete, Inc., to discharge or to otherwise discriminate against Bernard E. Piper, or any other employee for failure to tender periodic dues without adequately advising him of his obligations.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL reimburse Bernard E. Piper for the reinitiation fees paid by him to us.

WE WILL notify Mobile Pre-Mix Concrete, Inc., in writing, and advise Bernard E. Piper, in writing, that we rescind any request or demand that he be discharged or not allowed to work and that we have no objection to his continued employment with unimpaired rights and privileges.

TEAMSTERS CONSTRUCTION WORKERS
LOCAL UNION NO. 13